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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 753

CARL B. GEORGE

Petitioner,

vs.

C. M. LEONARD AND LEONARD CONSTRUCTION COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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C. M. LEONARD AND LEONARD CONSTRUCTION COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Petitioner Carl B. George, respectfully prays certiorari to review a decision of the United States Court of Appeals for the Fourth Circuit reversing a judgment of the United States District Court for the Eastern District of South Carolina in favor of petitioner and remanding the case with a direction to enter judgment for respondents (R. 300), one judge dissenting (R. 305).

Summary Statement of the Matter Involved

This case involves an action for malicious prosecution brought by petitioner against respondents in the United

States District Court for the Eastern District of South Carolina (R. 3) and tried to a jury, which returned a verdict for petitioner in the amount of Fifteen Thousand Dollars ($15,000) (R. 187) on which judgment was entered (R. 189) Respondents made a motion to set aside the judgment (R. 190) and the Court wrote an opinion discussing the applicable law, and denied the motion (R. 190).

From this order the respondents appealed to the United States Court of Appeals for the Fourth Circuit, and the majority of that Court reversed the judgment and remanded the case with directions to enter judgment for respondents (R. 300). A dissenting opinion was written (R. 305). Petitioner then petitioned said Circuit Court of Appeals for a rehearing (R. 312), which petition was denied.

Petitioner had been assistant manager of respondents' farm in South Carolina (R. 17) where a large number of turkeys were being raised (R. 17). Respondents' superintendent, Boykin, rigged up a case to have some of respondents' turkeys purchased from petitioner by a member of the state constabulary (R. 87) and then had a warrant issue charging petitioner with fraudulent breach of trust (R. 94), whereupon petitioner was arrested and put in jail and later released on bail (R. 95). Then in order to get more money out of petitioner, knowing his financial condition and the urgency of his employment situation, Boykin, respondents' superintendent added further claims (R. 160), then took Four Hundred Fifteen Dollars ($415.00) from petitioner and had the warrant dismissed (R. 161).

Petitioner had previously applied for a position at Shaw Field in South Carolina and had to report for duty by the first of September or lose the job (R. 21). Petitioner explained this to Boykin (R. 27) who demanded that he pay Four Hundred Fifteen Dollars ($415.00), which he

did, saying that he was innocent and was paying the money under protest because he had to get away to take the position at Shaw Field (R. 27-29). The warrant was then dismissed at Boykin's instance (R. 29). Petitioner was greatly humiliated (R. 30).

Subsequently petitioner filed actions in the aforesaid District Court against respondents for abuse of process and malicious prosecution (R. 3, 186). In the abuse of process case, the trial court directed a verdict against petitioner; he appealed to the U. S. Court of Appeals for the Fourth Circuit, and that Court reversed the decision of the trial court. (Reported 169 F. (2d) 177.) On retrial of the abuse of powers case petitioner obtained judgment for Four Hundred Fifteen Dollars ($415.00) (R. 188), which has been paid (R. 189).

In the instant case, i.e., the malicious prosecution case, petitioner obtained judgment on verdict of a jury, in the amount of Fifteen Thousand Dollars ($15,000.00) (R. 187, 189). Respondents appealed from this judgment to the United States Court of Appeals for the Fourth Circuit, and that Court reversed, one judge dissenting, on the ground that by paying the sum of $415.00 to effect his release, petitioner had precluded himself from maintaining an action for malicious prosecution (R. 300).

The Evidence

Probably a discussion of the evidence is unnecessary and would be unwelcome, at least at this stage of the proceedings, since no contention has been made by respondents that petitioner failed to carry the burden of proof as to all the elements of a malicious prosecution case. The opinion of the United States Court of Appeals in the case of *George* v. *Leonard, et al.*, the malicious abuse of process case, reported at 169 F. (2d) 177, and the opinion of that

Court in the instant case, No. 5949 in the United States Court of Appeals for the Fourth Circuit, (R. 300) give a sufficient recital of the evidence for the purposes of this petition.

Jurisdiction

The judgment of the United States Court of Appeals was entered December 8, 1949, and motion for rehearing was denied January 14, 1950. Jurisdiction of this Court is invoked under Title 28, sec. 1254, United States Code.

Question Presented

The sole question presented is whether a person who has been arrested on a criminal charge, brought against him maliciously and without probable cause, is barred from maintaining his action for malicious prosecution by having paid his false accuser a sum of money in order to effect his release, at the same time protesting his innocence and saying he was being held up and was paying the money under protest only because he had to get away to take a position.

Reasons Relied upon for Allowance of Writ

The United States Court of Appeals based its decision on a misconception of the applicable South Carolina law.

Prayer

Petitioner prays that a proper Writ of Certiorari be issued, directed to the United States Court of Appeals for the Fourth Circuit, that this cause may be reviewed and reversed, and that such other relief be granted as may be proper.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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C. M. LEONARD AND LEONARD CONSTRUCTION COMPANY

BRIEF IN SUPPORT OF PETITION

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, sec. 1254, United States Code.

Statement of the Case

This is a malicious prosecution case, in which petitioner recovered a judgment on a jury verdict in the United States District for the Eastern District of South Carolina in the amount of Fifteen Thousand Dollars ($15,000) (R. 187, 189). Respondents appealed to the United States Court of Appeals for the Fourth Circuit, and that Court reversed, one judge dissenting, on the ground that petitioner's action had been barred by his having paid a sum

of money to respondents to effect his release (R. 300). The payment was made under protest, the petitioner saying he was innocent, that he was being held up, and was making the payment only because he had to report for work on a new position at the nearby air field the following day, per the Court's opinion (R. 300).

Specification of Errors

The United States Circuit Court of Appeals for the Fourth Circuit erred in holding that under South Carolina law a malicious prosecution action is barred by payment by a defendant in a criminal case to his prosecutor, made under protest, while he was protesting his innocence of the crime charged, and saying that he was being held up, and was paying only because he had to get away to take a position.

Argument

The dismissal of the warrant under the circumstances of this case was a sufficient termination of the proceedings to entitle the petitioner to maintain his action under the law of South Carolina.

The dismissal was at the request of the prosecution. In order to effect his release, petitioner signed a paper drawn by respondents with a special view of attempting to have petitioner admit guilt, and paid over a sum of money under protest, which was subsequently recovered from respondents as an illegal exaction (R. 186, 189).

The case of *Jennings* v. *Clearwater Mfg. Co.*, 171 S. C. 498, 172 S. E. 870, which is cited and quoted from in the majority opinion of the United States Court of Appeals, bears out petitioner's side of the case, rather than that of the respondents.

This case is governed by the law of South Carolina which

recognizes not only the general rule that dismissal of a criminal proceeding as the result of compromise usually precludes action for malicious prosecution, but also follows the equally well recognized exception to the general rule that such rule "is not applied in cases where the settlement was not voluntarily and understandingly made, but was made under coercion or duress". *Jennings* v. *Clearwater Mfg. Co.*, 171 S. C. 498, at page 506. Of course there is no settlement when one of the parties acts under duress, coercion, or undue compulsion as in this case. *White* v. *International Text Book Co.*, 156 Iowa 210, 136 N. W. 121, 42 L. R. A. (N. S.) 346, is a leading case.

The majority opinion of the Court of Appeals in the instant case stated (R. 301, 305): "There is evidence that, at the time of the settlement and dismissal of the criminal case, plaintiff protested his innocence of the crime charged and stated that he was being held up and making payment under protest because he had to get away. He testified that he had obtained a position at a nearby airfield and had to report next day to obtain the position." The language of the Court below is in itself sufficient to bring this case within the above exception to the general rule as recognized by the Courts of South Carolina in cases of malicious prosecution. The question of whether the money this petitioner paid respondents was wrung from him under duress was decided affirmatively by the jury so we have here no question regarding this protest. There is no authority in South Carolina that holds that payment under protest is an unfavorable termination and the majority opinion of the Court of Appeals cites no South Carolina case or any authority to the contrary from any other state. The court below failed to apply the South Carolina law.

In *Jennings* v. *Clearwater Mfg. Co.* the prosecution requested the dismissal, but when sued for malicious prose-

cution, argued that the dismissal was not such a termination of the criminal action as to support a malicious prosecution case. The Supreme Court of South Carolina rejected that contention, and in its opinion quoted from the case of *Harrelson* v. *Johnson,* 119 S. C. 59, 111 S. E. 882,

> "that the remedy accorded a citizen of damages for a malicious prosecution is intended to prevent and redress the malicious abuse of the process of the law, and that when the particular proceeding instituted in malice had been legally terminated, the remedy of the injured party has matured; he is not required to await an acquittal, an adjudication of his innocence, which may never come, and may be purposely prevented. A contrary ruling would permit a maliciously disposed prosecutor to hale the defendant before every magistrate in the country or before the same magistrate a dozen times, and be immune from damages by allowing the case to be dismissed by the magistrate."

The warrant on which petitioner was arrested was based on an entrapment rigged by respondents with the state constabulary (R. 88).

The trial court and the jury believed there was not probable cause for initiating the prosecution, and that there was malice on the part of respondents.

The trial court and the jury estimated the effect of the prosecution on petitioner's mind, and believed that he paid a sum of money, not as an indication of guilt, but in order to get away to take a needed position that he would lose if he could not report the following day.

Respondents had their chance to retry the facts of the criminal case in the malicious prosecution case. The evidence they would have given in the criminal case, if it had been allowed to go to trial, was given by respondents in the malicious prosecution case; but it could not take away the preponderance of petitioner's evidence as show-

ing that the prosecution was instigated without probable cause and with malice. Much less could respondents have shown that petitioner was guilty beyond a reasonable doubt.

As was pointed out in petitioner's petition for rehearing (R. 312), the majority of the United States Court of Appeals assumed as universal a rule that is not in effect in South Carolina (R. 314). If the South Carolina rule had been understood and followed by the Court below, the judgment would have been affirmed.

Conclusion

Wherefore, it is respectfully submitted that the writ of certiorari should issue, as prayed.

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SUPREME COURT OF THE UNITED STATES

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REPLY BRIEF OF PETITIONER

Argument

Respondents, in their brief in stating the "question presented", assume that there was a valid compromise by the parties in having the criminal charge against petitioner dismissed. The record does not bear out a valid compromise between the parties.

In effect, respondents were holding petitioner for ransom, through the instrumentality of the law, when he paid the demanded ransom, in order to be free from custody and able to accept a job that was only available for a limited time. (R. 21.) Although respondents were forced to disgorge their illegal exaction of money from petitioner as found by the jury (R. 184), they contend by this payment

shown by the record to have been illegally made petitioner should be barred from obtaining relief against them, and that respondents should benefit by their illegal act to the extent of barring this suit.

The evidence fully substantiated the fact that the respondents instituted the proceedings which resulted in the payment of the money by petitioner. The question of the innocence or the guilt of the petitioner was not left open. He asserted his innocence and protested payment (R. 27, 48, 62, 251). The jury found that the respondents had maliciously abused the process of the law to the extent of $415.00, and the judgment in that companion case has been paid by the respondents. But the very process that was abused is the process which is the subject of this suit, and the very $415.00 claimed by respondents as the compromise settlement is the $415.00 which was illegally exacted and which they have repaid by reason of the verdict of the same jury (R. 186) that decided the instant case. So that factually petitioner was determined to be innocent, and factually it was determined that there was no voluntary agreement of compromise and no settlement.

The Trial judge charged the jury that the plaintiff must show:

> "Third, that the criminal case was not ended by a compromise agreement" (R. 171);

also,

> "if you find from the greater weight of the evidence that the criminal charge was withdrawn pursuant to a voluntary agreement of compromise with the plaintiff, your verdict will be for the defendants" (R. 173);

also,

> "if Carl George in agreeing to the settlement with R. B. Boykin did not admit his guilt, but left the question of

his guilt or innocence open, he could not recover'' (R. 173).

The facts upon which the jury relied in reaching its verdict that the criminal case was not ended by a compromise agreement but was dismissed pursuant to money paid under protest and duress was based upon substantial evidence.

Petitioner testified: ''I found out that if I put in an application for my job and reported to work and got on the payroll by the first of September, I could go back, but after the first of September nobody could go back to Shaw Field unless he was a veteran'' (R. 21).

He further stated (R. 27): ''Boykin (respondents' agent) came in the house with the paper, walked in and he said, 'This is what we figure you owe us'. And, he said, 'If you'll agree to pay us this money, we'll dismiss the warrant and you can go.' And I said, 'Dixie, I don't owe you anything.' I said, 'I'm not going to pay you any money because I'm not accepting any guilt.' He said, 'Well, this is what we figure the amount of turkeys is that's gone, and it's the least figure that we will take to let you go.' And I told him then that he had me where I had to pay it. I had to go to Shaw Field the next morning and Dixie knew it. I told him that if I paid him any money I would certainly pay him under protest. And, he said then that we would go to the Magistrate's office and if I would pay him the money, he would dismiss the warrant.''

Petitioner's father testified (R. 61):

> ''. . . I said, 'Mr. Boykin, you've got me on the spot.' I said, 'You know that boy has got to get to Shaw Field in the morning to get to work or he can't get to work. Now, that boy has got a wife and two children.' . . .
> ''. . . 'Well, Dixie, I'm going to put up that amount of money to get away from here under protest.' He said, 'I don't owe you anything. I haven't taken any turkeys. I'm not accepting any guilt, but I'm going to

put up that amount of money in order to get off.'" (R. 62.)

It will thus be seen that the record shows in order to get to Shaw Field to obtain a job so he could support his wife and two children, petitioner paid this money.

The dissenting opinion of Judge Barksdale (R. 305-306) it is respectfully submitted correctly stating the applicable law and reaches the proper decision in this case.

Petitioner does not, as respondents in their brief apparently assume, ask this Court to reweigh the evidence. The jury weighed it to petitioner's satisfaction, and decided that in *quantum* and credibility it outweighed respondents' evidence. It determined by its verdict (R. 187) under the Court's instructions (R. 164-181) that respondents did not have probable cause to initiate the criminal prosecution, that petitioner was innocent of the charge, that respondents acted maliciously, *that the criminal charge was not withdrawn pursuant to a voluntary agreement of compromise,* and that petitioner did not, by the payment, leave open the question of guilt or innocence.

The District Court submitted the case to the jury under proper instructions as to every element necessary to be proved to recover.

The foundation and gist of an action for malicious prosecution is lack of probable cause. The termination of the criminal prosecution in this case did not destroy that lack of probable cause, and the jury so found.

However, the decision of the Court below rested upon inferences from facts within the exclusive province of the jury, and which could not be drawn by the Court below contrary to the verdict of the jury without erroneously usurping the functions of that fact finding body. *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544. The decision of the court below was based in part on its

own interpretation of the evidence which was different from the jury's verdict, by which it is bound, and was therefore clearly erroneous as a matter of established law. *Lavender* v. *Kurn*, 327 U. S. 645, 90 L. Ed. 916.

The exception to the general rule relating to termination of criminal prosecution (payment under protest or involuntarily, or without understanding) is well recognized in the South Carolina case of *Jennings* v. *Clearwater Mfg. Co.*, 171 S. C. 498, 172 S. E. 870. (See particularly the long annotation cited therein dealing with this exact question.) But the court below misinterpreted the established law of South Carolina although it cites no South Carolina case that holds that payment *under protest* is an unfavorable termination of a criminal proceeding as to a defendant. The authority is to the contrary, including the cases and authorities cited in the opinion of the court below in its decision of December 8, 1949. (R. 300-305.)

In none of the South Carolina cases cited by respondents in their brief, except *Jennings* v. *Clearwater Mfg. Co.*, 171 S. C. 498, 506, 172 S. E. 870, did the court discuss the questions here involved.

The Supreme Court of South Carolina does not hold that a person situated as petitioner was would be barred from instituting a suit of this character under the circumstances of the dismissal of that suit, as respondents contend, and as the court below held.

In fact the Supreme Court of South Carolina in *Jennings* v. *Clearwater Mfg. Co., supra,* approved the statement in 67 A. L. R. on page 519, that the rule contended for by respondents and followed by the court below

> "is not applied in cases where the settlement was not voluntarily and understandingly made, but was made under coercion or duress; *nor where the dismissal is not shown to have been the result of a valid compromise or settlement.*" (Emphasis supplied.)

In *Baker* v. *Hornick,* 57 S. C. 213, 35 S. E. 524, cited by respondents in their brief, the question of termination of the criminal case was not raised or discussed in the case, except in the most general way as one of the elements of the case.

In *China* v. *S. A. L.,* 107 S. C. 179, 92 S. E. 335, the grand jury had ignored the railroad company's charge of breach of trust, which was held a sufficient termination of the matter to give rise to a suit for malicious prosecution.

In *Stoddard* v. *Roland,* 31 S. C. 342, 9 S. E. 1027, it was held the lower court was right in granting a non-suit for want of probable cause and the question of termination was not decided.

If a payment under protest is not an involuntary payment, then there can be no such thing as an involuntary payment. The Court of Appeals recognized that the petitioner asserted his innocence and protested the payment (R. 301), but held it was of no consequence. Thus the court below disregarded the findings of the jury, acted contrary to and disregarded an established rule of law, and failed to follow the South Carolina rule. The court below held there was a compromise (R. 301), but there was none (R. 61, 62, 270), as this $415.00 was paid under protest in order for respondent to get away to take a job that would only be available the next day. The Court of Appeals held that your petitioner is estopped to bring this action because of the payment of this $415.00 under protest (R. 303-304); yet the jury required respondents to return the money.

In *Morton* v. *Young,* 55 Me. 24, a case of malicious prosecution, it was held:

> "The same legal consequences do not follow acts done under duress of arrest and protest, as when done freely and voluntarily,—under the abuse, as under the legitimate use of legal process. * * * The law does not make successful wrong a shield to protect its perpetrator from liability to afford redress to the injured

party. If the wrongdoer has his hour of triumph, his hour of retribution is sure to come at last. The man who falsely, maliciously, and without probable cause, sues out a process, arrests another, and compels him to pay money to procure his liberty, commits a wrong for which the law affords the sufferer redress in damages. The suing out of legal process is an abuse of the law to cover the fraud, the very wrong which the action of malicious prosecution was instituted to redress. It would be a reproach upon the law, if it should allow the payment of the money, thus wrongfully and illegally extorted from the plaintiff, to have any legal effect against him."

Surely this Court will not permit the extortion of $415.00 under these circumstances to bar this petitioner from recovery when the South Carolina rule, as stated in *Jennings* v. *Clearwater Mfg. Co.*, 171 S. C. 498 (172 S. E. 870), at page 506 is that the rule of Dismissal of Criminal proceedings as result of compromise or settlement as precluding action for malicious prosecution,

> "is not applied in cases where the settlement was not voluntarily and understandingly made, but was made under coercion or duress; nor where the dismissal is not shown to have been the result of a valid compromise or settlement."

Conclusion

WHEREFORE, it is respectfully submitted that the writ of certiorari should issue, as prayed.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR CLIFFORD M. LEONARD AND LEONARD CONSTRUCTION COMPANY IN OPPOSITION

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BRIEF FOR CLIFFORD M. LEONARD AND LEONARD CONSTRUCTION COMPANY IN OPPOSITION

OPINIONS BELOW

The opinion and order of the United State District Court for the Eastern District of South Carolina denying the Respondent's motion for judgment *non obstante veredicto* is reported as *George v. Leonard,* 84 F. Supp. 205 (R. 190-201).

The opinion of the Court of Appeals for the Fourth Circuit reversing and remanding the cause with directions

to enter a judgment for the defendants is reported as Leonard v. George, 178 F. (2d) 312 (R. 300-306).

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on December 8, 1949. The appellee's petition for rehearing was denied on January 14, 1950. The petition for a writ of *certiorari* was filed on April 14, 1950. The jurisdiction of this Court is invoked under Title 28 U. S. C. A. 1254.

QUESTION PRESENTED

The question presented is whether a person who has been arrested on a criminal charge and released on bond can maintain an action for malicious prosecution where he has avoided a final adjudication of the criminal case by compromising the prosecutor's claim and having the charge dismissed.

STATEMENT

In February 1945, Carl George was employed by the Leonard Construction Company as assistant manager of its Sunny Hill Plantation in Kershaw County, South Carolina, and charged with the supervision of the raising of turkeys and keeping of accurate records in that particular (R. 17, 83, 142).

Though he had been employed for the calendar year, Carl George in mid-August 1945, prior to the marketing of the turkeys, demanded an immediate raise or his release. The Leonard Construction Company acquiesced in his release and Mr. George immediately applied for and obtained a job with the United States Government at its Shaw Field Air Base, some thirty miles from Sunny Hill (R. 21-22, 30-31, 155-6).

Investigating an apparent shortage in the flock of turkeys, R. B. Boykin, the defendant's manager, learned from plantation employees that Carl George had been secretly taking the turkeys at night. At the suggestion of State law enforcement officers, turkeys were purchased by one of them from Carl George on the Monday night before the termination of his employment. (R. 87-9, 106, 135-6, 143-4). When he failed to report the sale or to deposit the money to the plantation account, Mr. Boykin caused his arrest for breach of trust on Thursday. On the same day he was released on bond (R. 25-6, 56, 95, 126-7).

The following day Carl George and his father asked Mr. Boykin to settle the matter out of Court. After negotiating for half a day on the amount due the Leonard Construction Co., Mr. George paid the Company four hundred and fifteen dollars and procured the dismissal of the warrant (R. 50, 58, 67-9, 96-8, 127-31, 161-2).

In February 1946, some six months after the warrant had been dismissed, Carl George instituted in the United States District Court for the Eastern District of South Carolina, two actions against the Leonard Construction Company and Clifford M. Leonard, its President, each asking $175,000.00 damages. Both actions arose out of the facts relating to Mr. George's arrest. One, Civil Action 1444 (R. 3), was denominated "malicious abuse of process", the other, Civil Action 1445 (R. 203), "malicious prosecution". The cases were consolidated for trial.

At the first trial in March 1947, the defendants' motions to dismiss were granted after the plaintiff had completed his case. Thereafter the trial judge granted new trials in each case for the reasons presented in accompanying opinions. *George v. Leonard,* 71 F. Supp. 662; *George v. Leonard,* 71 F. Supp. 665.

After the District Judge's direction of a verdict for the defendants in the malicious abuse of process case had been reversed by the Court of Appeals, *George v. Leonard,* 169 F. (2d) 177, and after two mistrials in the "malicious prosecution" case (R. 190-1); the fourth trial resulted in a judgment for the plaintiff in the "malicious abuse of process" case on a jury verdict for actual damages (R. 186) and a judgment in the "malicious prosecution" case on a jury's verdict for punitive damages only (R. 187-189). The trial Judge refused the defendant's motion for judgment in the "malicious prosecution" case (*George v. Leonard,* 84 Supp. 205) (R. 190-201). The judgment in the "malicious abuse of process" case was paid by the defendants and the judgment in the "malicious prosecution case was reversed by the Court of Appeals for the Fourth Circuit in *Leonard v. George,* 178 F. (2d) 312. The petition seeks review of this reversal.

The District Court properly charged the jury that there could be no recovery in the malicious prosecution action if the criminal proceeding was dismissed as a result of a settlement between the accused and the prosecutor (R. 166, 173). However, he submitted the case to the jury on the theory that there was evidence that the warrant was dismissed for failure of proof or because improvidently brought (R. 166, 183, 194).

The Court of Appeals held that there was no evidence that the warrant was dismissed "because it was improvidently brought or because of no sufficient proof to support it", and that the judgment could not be sustained on the theory that the accused had been coerced into settling or on the theory that the settlement was against public policy (R. 301-304). It therefore reversed with directions that the District Court enter judgment for the defendants. *Leonard v. George,* 178 F. (2d) 312.

ARGUMENT

I

certiorari does not Lie to Review Evidence

The decision of the Fourth Circuit decides no issue of South Carolina law. In accord with the general rule, South Carolina allows no recovery in malicious prosecution where the accused has entered into a compromise settlement with the prosecutor. The Court of Appeals has merely evaluated the evidence and reached the conclusion that it shows such a compromise.

That issue is not reviewable here. Supreme Court Rule 38 (5); *Houston Oil Co. v. Goodrich,* 245 U. S. 440; *Southern Power Company v. N. C. Public Service Co.,* 263 U. S. 508; *General Talking Pictures Co. v. Western Electric Co.,* 304 U. S. 175; *National Labor Relations Board v. Waterman,* 309 U. S. 206.

II

The Case was correctly decided by the Court of Appeals under applicable South Carolina Law

In order to maintain an action for malicious prosecution in South Carolina it is incumbent upon the plaintiff to show *inter alia* that the criminal prosecution terminated favorably to him. *Stoddard v. Roland,* 31 S. C. 342, 9 S. E. 1027; *China v. S. A. L.,* 107 S. C. 179, 92 S. E. 335; *Baker v. Hornik,* 57 S. C. 213, 35 S. E. 524; Restatement of the Law of Torts, Vol. 2, § 660.

It is also the law of South Carolina that where the criminal proceeding has been terminated pursuant to an agreement of compromise, or has been withdrawn at the request of the accused, there is not such a termination as will support an action for malicious prosecution. *Jennings v. Clearwater Mfg. Co.,* 171 S. C. 498, 506, 172 S. E. 870,

873; Restatement of the Law of Torts, Vol. 2, § 660, pages 398, 400; *George v. Leonard,* 71 F. Supp. 665, 666; *Leonard v. George,* 178 F. (2d) 312, 313; *White v International Text Book Co.,* 156 Iowa 210, 136 N. W. 121, 42 L. N. S. 346.

Since the evidence shows that the criminal proceeding was terminated by a compromise settlement, instigated by the accused and voluntarily and knowingly consummated by him, there was no issue for the jury. *Leonard v. George,* 178 F. (2d) 312, 314; *Ewe v. Angland,* (Ill.) 60 N. E. (2d) 774; Annotation 67 A. L. R. 513 (R. 166).

CONCLUSION

The petition presents no grounds for *certiorari.*

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